

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

HUMAN POWER OF N COMPANY,
Plaintiff,

v.

**NATHAN BRYAN, PNEUMA NITRIC
OXIDE, LLC, NITRIC OXIDE
INNOVATIONS LLC, AND BRYAN
NITRICEUTICALS, LLC,**
Defendants.

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A-21-CV-811-DII

ORDER

Plaintiff's Motion for a Default Judgment to Sanction Defendants for Spoliating Evidence, Apparent Witness Tampering, and Other Significant Discovery Abuses (Dkt. #67) is before the court.¹ After considering the parties' briefing and oral arguments, as well as the relevant law, the **GRANTS** the motion **in part**.

IT IS ORDERED THAT:

1. Based on the foregoing the following instruction will be provided to the jury:

The court has determined that certain evidence has been lost or deleted by Defendants. In such cases, you may draw an adverse inference against the party responsible for the loss or deletion of evidence. This means that you may consider the missing evidence as potentially unfavorable to that party. However, you should also carefully assess all the evidence that has been presented to you and evaluate its significance in the context of the entire case before reaching your verdict.

2. Anthony Turturro is hereby precluded from attending or testifying as a witness at trial, and all evidence concerning Mr. Turturro is hereby excluded.

3. It is also hereby **ORDERED** that:

¹ United States District Judge Robert Pitman referred this matter to the undersigned for disposition or report and recommendation as appropriate pursuant to 28 U.S.C. § 636(b)(1), Rule 72 of the Federal Rules of Civil Procedure, and Rule 1 of Appendix C of the Local Rules of the United States District Court for the Western District of Texas. *See* Text Order dated 06/27/23.

- a. Defendant Nathan Bryan and Susan Shaffer, an officer of Defendants BN, PNO, and NOI, shall each submit themselves for an additional day of deposition, with Nathan Bryan answering questions both in his individual capacity and as a corporate representative. All court reporter costs (but not attorneys' fees) associated with each such deposition shall be borne by Defendants, including copies of transcripts and video recordings for Plaintiff.
 - b. Plaintiff is granted leave to subpoena and depose nonparty Bill Huff of GBV Medical solutions; and depose nonparties Patheon Pharma Services and forensic examiner Edward Cramer.
 - c. Due to the time constraints associated with obtaining discovery from nonparties, Plaintiff shall have an additional 5 months in which to complete the above-referenced discovery.
4. All emails either sent or received by Defendant Bryan from any of his email addresses, that Defendants did not produce but which were produced by a third party will be self-authenticating to the same extent as set forth in W.D. Tex. L.R. CV-26.
 5. Plaintiff is entitled to an award of attorneys' fees incurred in connection with the Sanctions Motion in an amount to be determined based upon supplemental briefing as ordered by the Court in its July 18, 2023, hearing and being submitted in conjunction with this proposed Order.

In all other respects, the motion is **DENIED**.

SIGNED September 6, 2023.



MARK LANE
UNITED STATES MAGISTRATE JUDGE